K

1952.

File No. O Leases/52

Legal Department—

A **BRANCH**

Subject:— Opinions regarding leases

O-52/E

112-A

File No. O Leases/52

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MS

50 St. 10-0-'50.

Legal Department.

The Revenue Department has referred this case to the Solicitor to Government for advice as to whether the deposit paid by the Licensee of plot No. 50, Block 1 Back Bay Reclamation shouldbe refunded. It appears that the licensee has completed the construction of the building and the licensee has been issued a Completion Certificate by the Executive Engineer, Presidency Division. The licensee's Architects, Messrs Sheth and Co. by their letter dated 21st August 1951 addressed to the Collector of Bombay requested the Collector to refund the amount of deposit kept with him by the licensee of the said plot on the ground that the construction of the building as provided under the agreement herein has been completed and the completion Certificate obtained from the Executive Engineer, Bombay. A reference was thereafter made by the Collector to the Solicitor to Government for his opinion as to the refund of the deposit. The Solicitor to Government by his letter dated 7th September 1951 stated that one of the conditions of the agreement is execution of a lease by the licensee and therefore the licensee is not entitled to the refund of the deposit. The matter was again referred to by the Revenue Department and the Solicitor to Government expressed his opinion that unless the licensee executes the lease as per conditions provided in the agreement for lease as per conditions provided in the agreement for lease and accepts the terms and condition ions thereof, he is not entitled to the refund as of right.

Contd.

The Collector of Bombay wrote to the Secretary to Government, Revenue Department on 7th January 1952 for reconsideration of the question of refund of the deposit in view of the contention raised by Messrs. Sheth and Co., Architects for the licensee, in their letter dated 22nd December 1951. The matter has therefore been referred to the Solicitor to Government for reconsideration.

By an agreement dated 30th January 1946 the licensee was given a license and authority to enter upon the piece of land described therein for the purpose of performing the agreement and not for any other purpose. Before signing the said ag

agreement the licensee has deposited with the Collector of Bombay 3% Government Promissory Notes 1960-66 of the face value of Rs.49,000/- as security for due compliance with and performance by the licensee of all the terms and conditions contained in the said agreement so far as the were to be observed and performed by the licensee Clause 6 of the said agreement provides that as soon as the Executive Engineer has certified that a building and compound walls have been erected in accordance with the terms thereof, and if the lice sees shall have observed all the stipulations and conditions therein contained the Government will g grant and the licensees or their approved nominee, if any, will accept a Lease of the said land and the building and compound walls erected thereon for term and subject to the payment of rent

Contd.

to the payment of rent therein mentioned.

Clause 8 of the said agreement provides that upon due compliance by the licensees with all their obligations under the said agreement the deposit or such part thereof as shall not have been appropriated shall be paid or transferred to the licensees The said condition in clear terms says that before the licensee can claim refund of the deposit he must satisfy that he has observed and performed all the obligations under the agreement and if the amount of the deposit may be paid or transferred to him as the case may be. One of the obligations of the licensee under the agreement is that he shall accept a lease for the term and subject to the payment of rent mentioned in clause 6 of the said agreement. In view of those conditions contained in the said agreement the Solicitor to Government had advised that unless the licensee executes the lease as per conditions provided in the agreement for lease as per conditions provided in the agreement for lease and accepts the terms and conditions thereof he is not entitled to the refund as of right. The position has not been altered since the said opinion was given by the Solicitor. The threat of the licensee's Architects to claim damages in case of depreciation of the Government securities is out of place. It is for the Administrative Department to consider whether it should insist upon the retention of the deposit which it is legally entitled to do till the lease is executed by the licensee.

Solicitor to Government.

Legal Department.

The licensee granted to the licensee under the Agreement for lease is not transferrable. Clause 6 of the Agreement provides that on the completion of the building a lease may be granted either to the licensee or his nominee if approved by Government. The question now for consideration is whether Government is entitled to unreasonably withhold its approval in the case of a nominee proposed by the licensee and assuming it is not entitled to do so, whether it is bound to give reasons for refusing to approve the particular nominee.

2. Where a lease contains a covenant by the lessee that he will not assign or underlet the premises without the consent of the lessor, it is usual to qualify it by a stipulation that such consent shall not be "arbitrarily" or "unreasonably" withheld or shall not be "[illegible] refused in the case of an assignment to " " a respectable or responsible person". In England Section 19(1) of the Landlord and Tenant Act, 1927, provides that in all leases containing a covenant against assigning or under-letting suc such covenant shall be deemed to be subject to a proviso to the effect that such licence or [illegible] covenant is not to be unreasonably with-held and in certain kinds of leases where the assignment is effected seven years before the end of the term no such consent shall be required at all if proper notice is required by the section has already been given. In India there is no such

such statutory provision and the stipulation referred to above will not be read in the covenant. In any case, in the Agreement for lease which by its terms creates only a licence there would be no justification for reading that stipulation. Same observations would equally apply in the case of the restrictions imposed by section 144 of the Law of Property Act, 1925 in England which provides that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or covenant.

3. Assuming that the statutory restrictions in imposed in England will apply in India on equitable grounds the question for consideration would always be whether the consent has been unreasonably with-held. The consent is unreasonably with-held if if the lessor with-holds it in order to get some advantage for himself as for example to obtain a surrender of a lease or to prevent the assignee from giving up other premises of which he is also the lessor. <u>The lessor is not bound to give any reasons for refusing his consent.</u> He may be justified in with-holding it if <u>in his opinion</u> the proposed assignee is objectionable for some personal or financial reason. (Halsbury Vol. p. 351, section 423 and cases cited under foot-noter)

4. If the licensee has completed the building and obtained completion certificate, it would be open to Government to refuse to approve the nominee without assigning any reason. The

Contd.

The licensee may obtain the lease in his own name and thereupon he will and thereupon he will be free to assign it to whomsoever he desires. In view of the Advocate General's opinion, it does not seem necessary to take serious notice of the agreement between the licensee and proposed assignee.

24/11

Additional Secretary to Government.

U.R. to R.D.No. 1194 dated the 28th January 1952.

Subd for signature and approval

MM

SC dt. 14-6-'50.

No. 4650

Office of the

Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 27th March 1952.

From:

Shri P.N.Lad, I.C.S.,

Remembrancer of Legal Affairs,

Secretariat, BOMBAY.

To

The Deputy Director of Agriculture,

(C.S.), S.S., Poona 5.

Subject:- Lease of Survey No. 271 at Dharwar.

Sir,

With reference to your letter No. AC/150/1940, dated 18th February 1952 and reminder No. AC/150/1940-I, dated 11th March 1950 on the above subject, I have the honour to enclose my opinion in the matter.

Yours faithfully,

Remembrancer of Legal Affairs

MM

SC dtd. 14-6-'50.

Office of the R.L.A.

On termination of the lease, the land may be restored to the lessor, Shri Pralhadrao Bhimrao. He may be paid the rent due under the lease on his executing any indemnity bond.

2. Attention of the Deputy Director of Agriculture is drawn to the Rule 20(4) of the Law Officers Rules under which to the reference to the R.L.A. should have been made through Government in the Administrative Department concerned.

P.M.Lad.

Remembrancer of Legal Affairs.

[redacted]

56 dt. 14-6-'56.

LEGAL DEPARTMENT.

The use of the motor garages as laundry can be stopped only if it becomes nuisance or annoyance or disturbances to the owners, occupiers, residents of other premises in the vicinity. Since neither of the owners, occupiers nor residents of the premises in the vicinity have complained about nuisance, annoyance or disturbances to them by the user of the garage as laundry, it may be difficult to justify the action although as provided under clause 2(q) the lessor's decision on that point shall be final and the lessee is bound to accept it.

14/4

Solicitor to Government.

U.O.to R.D.No. 5626, dated the 15th April 1953.

submitted for signature.

SC

SC dt. 14-6-'56.

17.

Legal Department.

If the Golf club gives a notice of relinquishment complying with the provisions of section 74 of the Bombay Land Revenue Code 1879, such notice will not require registration (vide sec. 90(e) of the Indian Registration Act, 1908) However if the club desires to execute a formal deed of surrender, there should be no objection on the part of Government provided the club agrees to bear all costs in respect thereof including stamp duty and registration charges. Prima facie there does not appear to be any objection in corporating the terms of settlement in an Agreement in form E-I or E-K.

14/4.

Solicitor to Government.

U.O. to H.D.No. 6633, dated the 15th April 1952.

Submitted for signature.

MS

SC dt. 14-6-'52.

Office of the P.W.D.

It is clear that the owner has actually constructed the building ignoring the suggestions made by the Public Works Department. There is therefore a clear breach of clause 5(a) of the Agreement inasmuch as the lessee failed to obtain the approval in writing of the Bombay State to the plans, specifications etc. Under clause 14, power to re-enter and resume possession of the land in case the Lessee makes default in performance of all or any of the conditions of the Agreement and to forfeit the deposit vests in the Governor General or an officer in his employ. Conditions on the lines of clauses 5(a) and 14 of the Agreement are also made in clauses 2(c) and 4 of the Lease required to be executed under clause 4 of the Agreement. There is no provision either in the Agreement or the Lease which empowers the State Government to terminate the Agreement or Lease for ~~former~~ breach of any of the conditions of the Agreement or Lease. The only course open is to report the matter to the Government of India, Ministry of Railway, to take such action against the Lessee as it may deem proper.

P.M.Lad. 16/7

Remembrancer of Legal Affairs.

U.R. to PWD.No. 5756, dated the 17th April 1952.

~~RM 56 dt 24-6-'56.~~

Defence of the D.J.A.

Rule 11 in Appendix XVIII of the Public Works Department Manual Volume II will have no application in this case in view of the clear provisions of clauses 3(a) and 3(g) of the lease, and unless it is proposed to alter the terms of the lease, which can be done only by mutual consent, an undertaking as proposed by the Executive Engineer, Presidency Division, cannot be taken.

P.Mad. 26/5

Superintendent of Legal Affairs.

U.O. to P.W.D. No. 6900, dated the 29th May 1953.

Submitted for signature.

Sd/-

SO dt. 14-6-1953.

Local Government.

It appears that the tenants of several buildings in Blocks I and II of the Backbay Reclamation Estate have enclosed the balconies with either glass or wooden shutters. The B.D. has decided to discourage the erection of such enclosures. The B.D. has raised for the consideration of the L.A. the question whether these objectionable enclosures could be levied under the law.

2. Under rule 8 of the Building Rules which form part of the conditions of the leases granted in respect of Back B ay Reclamation plots the construction of balconies on the first and upper floors projecting over the specified open spaces is permitted. Such balconies are required to be kept open and shall not be joined from floor to floor in such a way as to form a continuous projection encroaching on the open space required to be left under these rules. The object in requiring these balconies to be kept open was not only for the purpose of ventilation but also because of the fact that the projected area of the balcony is not considered part of the built up area (vide the Executive Engineer's letter dated 15-552 -copy at p.3 ante). If all the balconies are enclosed and joined from floor to floor there would be a continuous projection encroaching upon the area required under the terms of the lease to be kept open. But for this sort of breach of the conditions the punishment that can be meted

noted out would be to re-enter upon the plot as o contemplated by clause 4 of the lease. In this respect a notice of the specific breach and of the desire of the lessor to enter upon the land on the failur of the lessee to remedy the same will have to be served upon the lessee. But R.D. does not want to resort to this remedy. In the absence of any other provision in regard to the punishment of breaches it would not be feasible to impose monthly or annual fine or to make recover composition money.

Sd/-

Additional Secretary to Government.

U.O.to R.D., No. 9368, dated the 8th June 1953.

Sd/

SC dt. 14-6-'50.

Office of the R.L.A.

The two clauses referred to in the Under Secretary, Finance Department's note dated 16th May 1953 are distinguishable. In the case of the Antop Hill land, there was an absolute covenant prohibiting the assignment or subletting of the plot of land or any part thereof. The lease in that case was held on a monthly basis and the sub-leases were also from month to month. Clause 3(t) in the case of Back Bay Reclamation Plots permits the assignment or parting with the possession of the whole of the demised premises, but prohibits such assignment of a part of the demised premises or the parting with, assignment or underletting or transfer of the lessee's interest in the demised premises so as to cause any division therein or otherwise to alter the nature of the demise. The whole object underlying the imposition of this prohibition is to prevent the division of the demised premises or the alteration o of the nature of the demise. If the lessee in such case assign any half the leasehold interest in favour of another the latter would get the right to ask for partition which would be against the nature of the demise. A mere subletting of the flats on the buildings erected on the leased plots would not appear to alter the nature of the lease. For these reasons the view taken by the Under Secretary, Finance Department does not appear to be correct and the R.L.A's opinion at page 127 ante needs no reconsideration.

Contd.

2. As regards the other question raised the tenancy being a monthly tenancy no distinction need be drawn between the subletting of the land and the subletting of the structures. If it is proposed to sublet the structures clause 4 may be deleted.

P.M.Lal.

3/7

Remembrancer of Legal Affairs.

U.O.to S.D. No.11075 , dated the 4th July 1953.

Subd. for signature.

MM

SC dt. 14-6-'80.

Office of the E.I.A.

The original offer for taking the land on lease was by Messr. Hyam, Sofaer and Hillel. This offer has been duly accepted by the Collector on behalf of Government.

Before a usual Agreement for lease could be executed the original parties proposed Shri Radheyshyam's name at their nominee. Government accepted the nomination subject to the condition as to payment of premium and the original parties joining in the Agreement for lease as confirming parties.

Thereafter there were disputes between the original parties and Shri Radheshyam and the matter was referred to Arbitration. Government is not concerned with this aspect of the matter at all. However Government has agreed in correspondence to refund the deposits made by the original parties after Shri Radheshyam makes fresh deposits of equivalent amounts. Nothing has been done so far.

In the meanwhile rent has fallen in arrears. Question arises who is liable for it. The original parties certainly are liable and Shri Radheshyam who in correspondence has agreed to take the lease as the nominee of the original parties is equally liable, although he can take the technical legal stand that there is no binding final contract between him and Government.

It is understood that the original parties have spent some monies on the development of the land

and they are prepared to take up the lease if the nomination of the nomination of Shri Radheshyam is cancelled

The best course under the circumstances would be to call upon the original parties and Shri Radheshyam under condition 6 of the offer to execute the agreement within one month and to pay up all the arrears failing which the land would be resumed and the deposits appropriated towards the arrears without prejudice to Government's right recover the balance.

After resumption a fresh offer may be accepted from either the original parties or Shri Radheyshyam subject to the payment of a fresh deposit and a premium equivalent to the arrears.

P.M.Lal.

10/7

O/C

Remembrancer of Legal Affairs.

U.R. to R.D. No 11411, dated the 10th July 1952.

Submitted for signature.

[redacted]

SC dt. 14-6-'56.

Office of the E.L.A.

It appears that by a lease dated 29th September 1838 between one Dwarkadas Lallubhai and the East India Company a piece of land (bearing present City Survey No. 1300 in Ward No. I of Surat City) was taken on lease by the Company on the terms mentioned in the lease for a period of 99 years, with an option for renewal on the new terms and conditions to be agreed upon between the parties. This period expires on 28th September 1952. The land was taken on lease for the purpose of erecting bungalows for Government officers. It appears that the buildings constructedthereon were destroyed by fire and the land remained vacant. In the year 1891 the then Collector of Surat by a lease dated 24th October 1891 sub-let the said plot of land for a period of 61 years in favour of one Umerji Dharamsi Deputy subject to the conditions mentioned in the lease. Under condition 3 of that lease the said plot of land one or more buildings of a permanent character and construction within a period of two years from the date of the lease. Clause 8 of the lease provides for the penalty of forfeiture of all the rights under the lease in the event of the sub-lessee failing to observe the conditions of the lease. Under condition 10 of the lease, the sub-lessee is entitled to a renewal of the lease for futher successive periods of 99 years in perpetuity. The lessee is also given the liberty to assign his interest under the lease.

Contd.

Accordingly by a deed dated the 5th December 1918 the said Kavarji transferred all his rights under the said lease in favour of Shri T.K.Modi. Shri Modi has now applied to the Collector for renewal of the lease under condition 10 of the lease of 1891. At the same time, the successor-in-title of the original lessor(Dwarkadas Lallubhai) one Shri Jamshedji Kaikhusha Khavera has, through his solicitors, given notice to the Collector of Surat of his desire to get vacant possession of the land at after the expiry of the lease on 28th September 1953. The Collector considers that the request of Shri Modi for renewal of the lease ~~xx~~ deserves no consideration and the land not being required by Government for the purpose for which it was originally taken on lease may be returned to its lessor ~~x~~ Khavera.

The S.L.A. is requested to advice.

In the preamble to the indenture between Shri Kavarji Darasha and Shri Modi it is stated as follows

"Whereas Sheth Dwarkadas Lallubhai has demised to Government the land and hereditaments hereinafter described and intended to be hereby demised for the term of ninety-nine years commencing from the 28th day of September 1853 a t the yearly rent of Rs.12/- and subject to the covenant on the part of the said Dwarkadas Lallubhai to grant a renewed lease at the expiration of the ninety-nine years of the said term and with a like covenant for renewal as is here described and whereas by an ~~xxxx~~ instrument of lease dated the 25th day of October 1891 and passed on behalf of Government by the Collector of Surat to the transferor an under lease of the premises for the residue of the term was granted to the transferor subject to the covenant on the part of Government to grant a renewed lease at the expiration of the said residue of the said term for a period of ninety-nine years and for further successive periods

> periodsof ninety-nine years in perpetuity on the conditions as therein contained and whereas the transferee his entire right, title and interest under the lease, etc."

A covenant by a lessor who was himself an under-lessee to grant an extended term to his lessee in the event of the lessor himself obtaining an extended term from the free-holder is merely personal not being a covenant for renewal strictly so called(see Miller v. Trafford (1901) 1 Ch. 54). A lessee holding for a term or for lives with a covenant for renewal might before 1926 under-let upon similar conditions (see Halsbury's Vol. 20, p. 157). In the present case, as stated above, Government being under-lessee has granted a lease subject to the condition of renewal which renewal would in itsturn depend on the renewal of the original lease. Consequently,if Government is able to obtain a renewal of the lease from Shri Chayera, it will have to grant a renewal in favour of Shri Modi.

It is true that under condition 3 of the conditions subject to which the lease was grante to Kuverji Daraaba, the lessee was required to construct within two years from the date of the lease one or more buildingsof permanent character and construction and under condition 8 Government was given the right to forfeit the lease in the event of the breach of that covenant or any of the other covenants. It appears that Kuverji Daraaba did not construct any such building on the land. If so, the right to forfeit the lease arose some

some time in 1893 or 1894 but it appears that Government took no steps to forfeit the lease. Consequently under section 112 of the Transfer of Property Act Government would be deemed to have waived forfeiture as it would not be possible for Government to plead that it was not aware that the forfeiture has been incurred and also as the rent must have be n accepted by Government after the breach of the covenant. Consequently, Shri Modi, who has succeeded to the rights of Muverji Narasha would be entitled to ask for a renewal of the lease as provided in condition 10 of the lease. But as stated above, this right of Shri Modi would depend upon Government's right to have the original lease renewed. Accordingly to the terms of the original lease, Government would be entitled to a to a renewal on such of the new ~~terms~~ terms and conditions agreed upon between the parties. If the lease merely had stated that the lessee would be entitled to renewal, it could have been inferred that such renewal would be on the same terms and conditions. But it appears that the lease in question clearly recites that the renewal would be on such new terms and conditions agreed upon between the parties. These new terms and conditions being unsettle, it appears that Government would bot be entitled to claim renewal. However, Shri Modi may contend that the lessor Bhayera would have granted renewal of the lease which would accrue to his benefit and Government by refusal to ask for a renewal of the lease has prejudiced his claim, whereby he would be entitled to claim compensation. To avoid this kind of claim, it appears necessary that Government should ask for

Contd.

that Government should ask for a renewal of the lease from Chayera according to the terms of the original lease and, if Shri Chayera refuses, Shri Modi may be informed that as Shri Chayera refuses to renew the lease Government is helpless in the matter. In these circumstances, Government may give a notice to Shri Chayera for renewal of the lease and in the meantime Shri Modi may be informed that on a reply being received from Shri Chayera, the question whether it would be entitled to a renewal of the lease would be considered by Government.

P.M.Lad.

28/7

Remembrancer of Legal Affairs.

U.K. to R.D. No. 12^97, dated the 28th July 1952.

MM

GC dt. 14-6-56.

Office of the R.L.A.

Seen and returned.

2. The R.L.A. may be given timely intimation of the proposed conference to enable him to take part in the deliberations. In the meanwhile D.D. is requested to furnish the R.L.A. with a print of the lease along with a copy of the note on the preliminary discussion andof the Statement of the Department's no notes on the relevent clauses of the lease for the R.L.A.'s reference and use.

3. The R.L.A's opinion referred to at p.4 of the D.D. file isin accordance with the consistent view taken by the Legal Department and by the Govt. of Bombay and also by the Govt. of India that the rights which the inhabitants of a State enjoyed against itsformer Rulers avail them nothing against the successor Government and could not be asserted in the courts established by that Government except in so far as they have been recognised by the new sovereign power and that such recognition may be by legislation or by agreement express or implied. The latest application of this principle by the Privy Council was in the case of Asrar Ahmed v. Durgah Committee Ajmer (4[illegible] Bom. L.R.p. 336 (Privy Council) which was a case of territory ceded and not conquered The Govt. of India's administrative decision in the Ministry of States' letter referred to in the note at p.11 of theD.D. file is also consistent with this principle and in fact assumes that the successor Government has power to terminate or modify the terms of grant. If the grant was binding, there

there would be no scope for determination or modification without being liable for damages. The question of recognising such contract is, therefore, one of policy, principles for which have been laid down in the Govt. of India's letter.

4. As will appear from the Deed of Lease it Covers a number of reconnaissions some of which fall within the executive competence of the Union Government, andsome within the executive competence of this Government. It is presumed that the provisions of the lease are being scrutinised by reference to the Mines and Minerals (Regulation andDevelopment) Act, 1948 and it will be advisable to choose only those concessions by reference to the provisions of that Act and mineral concession Rules andthen divide the rest into those which are within the competence of the Government of India.

5. Subject to the general observations set out above following comments are offered:-

(a) Clause 1 may be deleted.

(b) Clause 2 of sub-clause (i) which purports to confer thesole andexercise right to search for procure, recover, extract, win and use all raw or natural salt brine and all other similar substances, liquids and materials required for the preparation, production or manufacturing of salt andmarine minerals would not fall within the competence of this Government at all. Article 297 of the Constitution provides that all lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the

for the purposes of the Union while manufacture, supply and distribution of salt by Union Agencies, and regulation and controll of manufacture, supply and distribution of salo by other Agencies, and falls in entry No. 58 of the Union List in the Seventh Schedule to the Constitution Presumably the subject matter of this sub-clause would fall within the scope of the Central Excises and Salt Act, 1944. The same observations would apply to concessions specified in sub-clause 2 and 3 of the same clause in respect of such matters as would fall outside the competence of this Government.

(e) Clauses 3 to 6 No comments.

(d) Clauses 7 and 8. See observations with reference to clause 2 above. Reference to prior deed of concessions should be deleted. The grant of licence under the Indian Electricity Act, 1910 would be governed by the provisions of that Act and no provision appears to be necessary

(e) Clause 9 and 10. No comments.

(f) Clause 11. Company has agreed to its deletion.

(g) Clauses 12,13,& 14. No Comments

(h) Clause 15. Procedure for acquisition would be governed by the provision of the land Acquisition Act, 1894 and no such provisions seem to be necessary.

(i) Clause 16. No comments.

(j) Clause 17. May be deleted as the subject matter falls not within the scope of the statute relating to Municipalities.

Contd.

(k) Clause 18. May be deleted.

(l) Clause 19. No comments.

(m) Clause 20. May be deleted. This may also fall within the competence of Government of India.

(n) Clause 21. Company has agreed to its deletion.

(o) Clause 23. This will fall within the competence of the Government of ~~@~~ India.

(p) Clauses 23,24,25. Company has agreed to their deletion

(q) Clauses 26,27,28,29 & 30. No comments

(r) Clauses 31. The clause may be re-drafted on the lines of the clause proposed in the draft lease under Mineral Concession Rules.

P.M, Ind.
23/8

e/o
Remembrancer of Legal Affairs.

U.O. to D.D. No. 13910 dated the 26th August 1952.

Submitted for approval and signature.

MM

36 dt. 14-6-'56.

Office of the R.L.A.

By a lease dated the 14th August 1946 the Collector of Bombay had granted a plot of land at Gilbert Hill, Andheri, to one Ashrafkhan Hamirkhan for a period of 10 years for quarrying purposes. Condition 7 of the lease provided that the lessee shall not sublet, assign, mortgage or otherwise encumber the said plot of ground or any portion thereof without obtaining the Collector's previous permission. It appears that the lessee had sublet a part of the said land to Shri L.A.Desai. The lessee has since left for Pakistan and his leasehold interest in the said plot of land has been declared to be evacuee property vesting in the Custodian of Evacuee Property. It appears that on a representation made by Ashrafkhan in 1946 the Collector has reduced sq. yards. As the lessee has committed a breach of the terms of the lease the Under Secretary, Revenue Department, proposes that the land should be resumed and then leased to Shri Desai who will pay twice the rent which the evacuee paid. The Rehabilitation Department however considers that in view of the provisions of the Administration of Evacuee Property Act, 1950, it will not be possible to resume the land. The R.L.A. is requested to advise.

2. Section 18 of the Administration of Evacuee Property Act, 1950, provides inter alia that notwithstanding anything contained in any other law neither the evacuee nor the Custodian whether

whether as an occupancy tenant or as a tenant for a fixed term of any land shall be liable to be ejected or deemed to have become so liable ~~xxx~~ on any ground whatsoever for any default of the Custodian. In this case the lease was for a fixed term of ten years and on the migration of the lessee the leasehold interest was declared vesting in the Custodian of Evacuee Property. Section 18 offers protection to the leasehold interest of an evacuee against any default of the Custodian. But here no default was committed by the Custodian. The lessee himself had committed a breach of condition 7 of the lease by subletting the land to Shri Desai without obtaining the previous permission of the Collector. Section 18 would not therefore appear to come in the way of the action proposed by the Revenue Department as suggested by the Rehabilitation Department. There would therefore be no objection to the Collector resuming the land for non-compliance with the condition of the lease as provided for under condition 9 thereof.

3. It appears however from a separate communication since received from the Collector, Bombay Suburban District and forwarded by the Revenue Department that the leasehold interest in the land measuring 2500/- sq. yds. which has been leased to Ashrafkhan for a period of 10 years has not been declared to be evacuee

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property; and the same does not vest in the Custodian. There would be no objection therefore to resuming the land for breach of condition 7.

Fld.Lnd.

c/c

Remembrancer of Legal Affairs.

U.R. T^ R.D. No.18503, dated the 21st August 1953.

Subd. for signature.

MM

SC dt. 14-6-1956.

CEPICT OF THE R.L.A.

The first question is whether the enclosures of the balconies can be allowed to remain on licences. Rule 9 of the Building Rules which form part of the conditions of the leases requires that the balconies "shall be kept open" and that they shall not be joined from floor to floor in such a way as to form a continuous projection encroaching on the open space: This is an absolute covenant in the lease to keep the balconies open and it was not open to the lessees to enclose them under any circumstances. There would be no objection, therefore, to allowing the lessees concerned to keep the enclosures on a licence. Such a licence will not affect the Government's right of re-entry on the breach of any other conditions of the lease (cf. Woodfall's Landlord and Tenant, p. 79); nor will it give a cause of action to other lessees as under clause 6 of the lease the lessor has reserved to himself the right to alter the layout of the Back Bay Reclamation Estate and the Building Rules.

2. The next question is whether the Collector should stop collecting ground rent as acceptance of rent might be construed as Government having waived their right of forfeiture of the lease. As the Collector reports that notices threatening forfeiture of the leases have already been issued, acceptance of rent thereafter might be taken by the lessees to mean that Government has no intention to exercise the right. The answer to this question is in the affirmative.

P.M.Ind.
MM 14/ma Remembrancer of Legal Affa-

Office of the R.L.A.

If the leases are terminated the buildings constructed by the lessees on the lands leased out for timber depots, can be removed. It is not known on what terms and conditions the lands have been leased by the Veyla Municipality. The possibility of terminating the leases may be explored by the Municipality.

P.M.Lad.
14/11

Remembrancer of Legal Affairs.

U.O. to L.S.O. & P.W.D. No. 10182/A, dated the 17th November 1953,

Submitted for signatures.

MM

Secl. 14-C-956.

Office of the D.L.A.

In this case lessee has requested the Government to allow him to mortgage the structure which he has put up on the Land belonging to Government and which he has agreed to take on lease. In the first instance it may be pointed out that he has not cared to execute an agreement which he has been reminded to do. Therefore, it is advisable that before anything can be done in the matter, he should first of all execute the necessary agreement for a lease ~~xxxx~~ Although it is feasible to grant to him the lease with a building stipulation that if he fails to complete the building and to produce the completion certificate from the Executive Engineer, Presidency Division, Bombay, within a particular period ~~xxx xxxxxxxx~~ ~~xxxxxxx

Office of the R.L.A.

Clause-6 of the Agreement for lease of Plot No. 50 of Block No. 1, Back Bay Reclamation, provides that "as soon as the Executive Engineer has certified that a building and compound wallshave been erected in accordance with the terms hereof and if the Lessees shall have observed all the stipulations and conditions hereinbefore contained the Grantor shall grant and the Licensees ortheir approved nominee (if any) will accept a Lease (which shall be executed by the parties in duplicate) of the aforesaid land and the buildings and compound walls." This clause does not oblige Government to accept any person put forth by the licensee as his nominee. On the contrary the grant of lease isrestricted only to an approved nominee which means a nominee approved by Government. As advised by the Additional Secretary in his opinion No. 1094 dated 25th January 1952, it is open to Government to refuse to accept a nominee put forth by thelicensee without even assigning reasons andit appears from the Collector's endorsement at p.11 ante that Government have refused to accept the nominee in this particualr case. The reasons for such refusal are not clear from the papers sent to this office. If, however Government now wants to change its decision and to accept the nominee in question it would be open to Government to do so but the question would be for the administrative Department to

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would be for the administrative Department to

decide as no legal point is involved in the matter.

P.M.Lad.

20/11.

Remembrancer of Legal Affairs.

U.R. TO R.D. No. 19452/A dated the 21st November 1952.

with agreement

Subd for signature.

MM

SO dt. 14-6-'50.

Office of the R.L.A.

The view taken by D.S., R.D. does not appear to be correct. The agreement in question is entered into as per clause (e) of G.R. R.D. No. 10035/39, dated the 23rd January 1945 and the licensee having agreed to all the terms and conditions mentioned therein by executing it would be bound by them, and in case of any inconsistency between them the terms and conditions of the agreement will prevail and not those of the G.R. which cannot incorporate all the details. Further clause 8 of the Agreement is in usual form which the Licensee must have undertaken to execute, when he applied for the lease of the plot. It is, however, for Government to decide whether the refund should be made relaxing the terms and conditions of the agreement, when the building has been completed.

P.M.Lad.

20/11

Remembrancer of Legal Affairs.

U.R. TO R.D. No. 19453/A dated the 21st November 1952.

Submitted for signature.

MM

SO dt. 14-6-'50.

Office of the R.L.A.

It appears that one Shri Krishna Rama is a tenant of room No. 36 in B.D.D. Chawl No. 82, at Worli. He has not been in actual possession of the room for the last several years and one Smt. Tukubai Tatoba is in actual possession of it during this period and she has been paying rent all the while. Shri Krishna Rama has now appeared and having failed to obtain peaceful entry into the room has been occupying the corridor space in front of that room. Smt. Tukubai has another room (Room No. 45) in the same Chawl in her name, but has allowed someone of her relatives to occupy it for the last several years. She has applied to the Manager, B.D.Chawls for transferring the tenancy of Room No. 36 in her name, but nobody occupying room No 45 has so far applied for regularising the tenancy of that room. The R.L.A. is requested to advise what steps should be taken to regularise the tenancies.

2. So far as Room No. 36 is concerned the tenant (Krishna Rama) has not been in occupation for the last several years, and Smt. Tukubai Tatoba has been in actual possession and has been paing the rent. Under clause (11) of the Tenancy the r room would be deemed to have been vacated by him and taken possession of by Government. Formal notice terminating the tenancy may be given to Shri Krishna Rama, and after the expiry thereof the tenancy may be transferred to Smt. Tukubai

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tenancy may be transferred to Smt. Tukabai Tatoba. So far as Room No. 45 is concerned the tenancy of Smt. Tukabai Tatoba may be terminated by giving her a notice of one month, whereafter the tenancy may be transferred to the name of the actual occupant if he is willing to continue as tenant, otherwise steps may be taken to evict him.

P.M.Lad.
31/10
Remembrancer of Legal Affairs.

Submitted for signature.

U.R. to P.W.M. No.1175/A Confl. dated the 31st October 1953.

MM
50 dt. 14-6-'53.